C_1-C_4-alkyl, C_1-C_4-alkoxy, C_3-C_{10}-cycloalkyl, or C_1-C_4-haloalkyl;" and the particular embodiments of R^1 which were recited in Claim 2 have been deleted. Claim 7 has been amended to independently define the meaning of R^1, and the reference to the first-mentioned formula in Claim 8 as formula *"I where R^3 = H"* has been deleted. Claims 9 and 10 have been revised to recite, as needed, the definitions of R^1 to R^4 and Het corresponding to the definitions set forth in Claim 1. Additionally, applicants have added new Claims 13, 15, 16 and 18, depending on 1, 6, 7 and 10, respectively, which further specify the nature of R^1 as *"C_1-C_4-alkyl, C_3-C_{10}-cycloalkyl, or C_1-C_4-haloalkyl."* New Claim 14 depends on Claim 2 and recites the particular denotations deleted from Claim 2, and Claim 17 depends on Claim 9 and relates to certain embodiments of the respective compounds. No new matter has been added.

The Examiner rejected Claims 7 to 10 under 35 U.S.C. §112, ¶2, as being indefinite.

- As concerns Claim 7 the Examiner took the position that is was unclear whether the definition of R^1 was in accordance with Claim 6 or with Claim 1. The issue has been obviated by applicants amendment which introduces a specific definition of R^1 in Claim 7.

- As concerns Claim 8 the Examiner criticized that the denotation R^3 = H lacked proper antecedent basis. The respective wording has been deleted so that the Examiner's criticism is no longer applicable.

- As concerns Claims 9 and 10 the Examiner pointed out that the claims lacked a definition of the radicals R^1 to R^4 and Het and applicants have, accordingly introduced the respective elements.

In light of the foregoing and the attached, Claims 7 to 10 are therefore deemed to fully comply with the requirements of Section 112, ¶2. Favorable reconsideration of the Examiner's position and withdrawal of the respective rejection is respectfully solicited.

The Examiner rejected Claim 9 under 35 U.S.C. §102(e) as being anticipated by the teaching of ***Grammenos et al.*** **(US 2005-0107619)**. However, anticipation under Section 102(e) requires that the invention be described in

(1) an application for patent, published under section 122(b), by another filed in the United States *before the invention by the applicant for patent* or

(2) a patent granted on an application for patent by another filed in the United States *before the invention by the applicant for patent*, ...

(*emphasis added*). The invention by applicants was at least as early as March 28, 2002, ie. the date of the German application of which the present application claims priority.[2] The earliest effective U.S. filing date of ***Grammenos et al.*** is March 12, 2003. As such, the ***Grammenos et al.*** reference does not constitute prior art under Section 102(e).[3] It is therefore respectfully requested that the respective rejection be withdrawn. Favorable action is solicited.

Further, the Examiner rejected Claim 10 under 35 U.S.C. §102(e) as being anticipated by the teaching of ***Sakaguchi*** (US 6,762,321). The Examiner pointed in this regard in particular to compounds enumerated in the reference which carry a fluoromethyloxy group in the position corresponding to applicants' moiety R^1. However, Claim 10 as herewith presented by applicants requires that the moiety R^1 be *"halogen, C_1-C_4-alkyl, C_1-C_4-alkoxy, C_3-C_{10}-cycloalkyl, or C_1-C_4-haloalkyl."* As such, the fluoromethyloxy substituted compounds of the reference are clearly outside of the realm of applicants' Claim 10.

Anticipation under Section 102 can be found only if a reference shows exactly what is claimed.[4] In light of the particular denotation of applicants' moiety R^1 the teaching of ***Sakaguchi*** cannot be deemed to show exactly what is claimed by applicants' Claim 10. Accordingly, the teaching of ***Sakaguchi*** cannot be deemed to anticipate the subject matter of applicants' claim. It is therefore respectfully requested that the respective rejection be withdrawn. Favorable action is solicited.

The Examiner indicated that Claims 1 to 6, 11 and 12 were allowable, and the same should in light of the foregoing apply to Claims 7 to 10, as well as newly added Claims 13 to 18 which depend, either directly or indirectly upon Claims 1, 6 and 10. The application should therefore be in condition for allowance, and favorable action by the Examiner is respectfully solicited.

2) Receipt of the certified copy of the priority document was acknowledged by the Examiner on form PTOL-326 which accompanied the Office action.

3) Applicants have initiated the translation of the German priority document into the English language and a copy of the translation meeting the requirements of Rule 55 will be forwarded to the Examiner as soon as it becomes available.

4) Cf. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985); *In re Marshall*, 577 F.2d 301, 198 USPQ 344 (CCPA 1978); *In re Kalm*, 378 F.2d 959, 154 USPQ 10 (CCPA 1967).

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Respectfully submitted,
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Encl.: CLAIM AMENDMENTS (Appendix I)

JR/BAS